

REPRESENTATIVE FOR PETITIONER: Brian Meyer, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Brian Meyer,)	Petition:	19-001-17-1-5-01567-17
)		
Petitioner,)	Parcel:	19-11-15-400-024.000-001
)		
v.)	County:	Dubois
)		
Dubois County Assessor,)	Assessment Year:	2017
)		
Respondent.)		

Appeal from the Final Determination of the
Dubois County Property Tax Assessment Board of Appeals

March 18, 2019

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. Brian Meyer made a number of arguments that his assessment is incorrect including that he was being taxed for public road, that a portion of the subject property was incorrectly classified as commercial, and that the subject property’s assessment was too high. But he did not provide any market-based evidence to support his claims. Thus, we order no change to the assessment.

PROCEDURAL HISTORY

2. Brian Meyer filed a notice for review with the Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2017 assessment year. The PTABOA issued a determination valuing the property as follows:

Year	Land	Improvements	Total
2017	\$67,900	\$123,900	\$191,800

3. The Board’s designated Administrative Law Judge, Timothy Schuster (“ALJ”), held a hearing on September 19, 2018. Neither he nor the Board inspected the property.
4. Brian Meyer represented himself and testified under oath. Kenneth R. Brosmer and Stacy L. Buhr testified under oath for the taxpayer. Marilyn S. Meighen represented the Assessor. Natalie Jenkins testified for the Assessor.
5. The subject property is a single family home with 25.752 acres of land located at 2954 S, US 31 in Huntingburg, IN. The property also contains other small buildings such as a detached garage, poultry building, and a shed. *Resp’t Ex. A.*
6. The following exhibits were submitted:

Petitioner’s Ex. 1:	GIS aerial map of the subject property,
Petitioner’s Ex. 2:	Brosmer drawing excerpt,
Petitioner’s Ex. 3:	Stenftenagel property record card (“PRC”),
Petitioner’s Ex. 5:	PRC for parcel 19-09-29-400-043.002-014,
Petitioner’s Ex. 6:	Meighen letter,
Petitioner’s Ex. 7:	Business Information for Meyer Creative Landscape,
Petitioner’s Ex. 8 ¹ :	Meyer 2016 income tax return.
Respondent’s Ex. A ² :	PRC for the subject property,
Respondent’s Ex. E:	2017 Business tangible personal property return,
Respondent’s Ex. G:	Indiana Department of Local Government Finance (“DLGF”) 2017 agricultural base rate certification.

¹ Following the hearing, taxpayer redacted the social security numbers for Brian and Janet Meyer on the Board’s copy and Assessor’s copy as shown by Brian Meyer’s initials. Meyer also submitted an unredacted, confidential copy on green paper to the Board.

² Meyer did not offer Exhibit 4. The Assessor did not offer Exhibits B, C, D, and F.

7. The record also includes: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

OBJECTIONS

8. The Assessor objected to Petitioner's Exs. 1-3, 5, and 7-8 for failure to exchange. Meyer responded by referencing Petitioner's Ex. 6, which is a letter from Meighen to him disclosing the Assessor's witnesses and exhibits. Meyer stated that if Meighen could "write in loopholes" he should be permitted to present his case. The Board's rules require parties to exchange evidence at least five business days before a hearing. Failure to do so may be grounds to exclude the evidence or testimony at issue. 52 Ind. Admin. 2-7-1.
9. Petitioner's Ex. 1 is a GIS map of the subject property. It appears that the Assessor provided this exhibit to Meyer previously, so we find no prejudice toward the Assessor by Meyer introducing it as evidence. We overrule the Assessor's objection to Petitioner's Ex. 1 and admit it into evidence.
10. Conversely, Petitioner's Exs. 2, 3, 5, 7, and 8 are the kinds of exhibits Meyer must exchange, but did not. He also commented that he was denied the option to fax the exhibits to opposing counsel. But 52 IAC 2-7-1(c) requires exhibits to be exchanged via personal delivery, United States mail, or private courier. It does not permit exchange via facsimile. We sustain the Assessor's objection and exclude Petitioner's Exs. 2, 3, 5, 7, and 8 from evidence. 52 Ind. Admin. 2-7-1. We note that the exclusion of these exhibits does not affect our determination.
11. The Assessor also objected Meyer's claim regarding the classification of the subject property because it was not raised on the Form 131. But the Assessor failed to cite to any authority for this objection. Therefore, we overrule the Assessor's objection on this issue.

12. The Assessor objected to the testimony of Stacy Buhr because Meyer failed to provide a list of witnesses. Meyer claimed that he sent his list to the Assessor's counsel via e-mail or text message, but the Assessor's counsel denied receiving any list. We find that Meyer failed to follow the exchange rules. We sustain the Assessor's objection and exclude Buhr's testimony from evidence. We note that the exclusion of Buhr's testimony does not affect our determination.
13. Meyer objected to Respondent's Ex. A, the subject property PRC, based on the accuracy of the numbers found on the card. While we understand Meyer is disputing the accuracy of his assessment, there is no evidence that the card was not an authentic representation of his current assessment. Thus, the objection is overruled.
14. He also objected to Respondent's Ex. E, a copy of Meyer's 2017 tangible business personal property return. Meyer argued that the exhibit did not include an addendum letter. Ms. Jenkins testified that she was not aware of any addendum. Under these circumstances, we do not find the exclusion of this exhibit is merited. Thus, we overrule the objection and admit Respondent's Ex. E into evidence.
15. Next, Meyer objected to the Respondent's Ex. G, the certified agricultural base rate from the DLGF. He objected because "cash rent" is not relevant. An exhibit is relevant if it has any tendency to make a fact more or less probable and is consequential in determining the action. Ind. Evidence Rule 401. We find the exhibit relevant because a large portion of the property is agricultural. We overrule Meyer's objection and admit Respondent's Ex. into evidence.
16. Finally, Meyer objected to all of Natalie Jenkins' testimony claiming she is biased because she works for Tyler Technologies, which has a contract with the Assessor's office. Jenkins testimony is inherently adversarial to Meyer's case, but that alone is not enough to exclude her testimony. Meyer's objection is overruled and we admit Jenkins testimony into evidence.

CONTENTIONS

a. Meyer's Case

17. The overarching theme of Meyer's case is that his property assessment is too high. Meyer offered main four reasons—as well as a handful of other reasons. The main reasons are as follows:
- His property is being improperly assessed for a state-owned roadway.
 - His property is being improperly assessed for commercial land.
 - His property is over assessed for the homesite.
 - His property is being “double taxed” for a portion of the land.
18. First, Meyer claimed that he is being assessed for state owned property because the state road in front of the subject property was widened. He offered the testimony of Ken Brosmer, who is apparently a surveyor. Brosmer indicated that the widened road might be closer to the subject property, but it would require a field survey to confirm. Brosmer was uncertain whether Meyer was paying taxes on “state owned property.” *Resp't Ex. A; Brosmer testimony; Meyer testimony.*
19. Next, Meyer commented that some of the property is incorrectly assessed as commercial property. Meyer stated that he no longer operates Meyer Creative Landscapes, and instead operates as a sole proprietorship. For this reason he argued the subject property should not receive a commercial classification. He admitted he uses the property as a storage yard. He also described it as a “staging area” for his sole proprietorship. *Meyer testimony.*
20. Third, Meyer argued that the homesite is over assessed. He mentioned a variety of factors that he felt impacted value, but did not request a specific assessment for the homesite. *Resp't Ex. 1; Meyer testimony.*
21. Meyer also argued that the portion of the subject property that was assessed as commercial land overlapped with the homesite land. In support of this, he provided an aerial GIS photo that shows an irregularly shaped area outlined in black marker labeled “½ acre” and an overlapping square outlined in red marker labeled “home site.” Meyer

stated that he received the document from the Assessor in a prior appeal. Jenkins testified that the black markings were made by someone with the Assessor's office in order to explain Meyer's assessment to him. She did not know who had made the red markings but believed it was Meyer. *Pet'r Ex. 1; Meyer testimony; Jenkins testimony.*

22. Finally, Meyer discussed other characteristics about the property such as its location near a flood plain, and its lack of certain utilities, like a city water line. He commented that the property is a poor commercial site because of its lack of utilities. Additionally, he mentioned other properties that he felt were similar but received lower assessments.

b. Assessor's Case

23. The Assessor contends Meyer failed to make a prima facie case for lowering the assessment or established that a portion of the property is double taxed. Natalie Jenkins testified that when she observed the subject property she saw commercial trucks parked there. She believed this was an indication of ongoing commercial activity. She also testified that no portion of the property was being taxed twice, and that Meyer was only being assessed for 26.752 acres. *Jenkins testimony.*

BURDEN OF PROOF

24. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b), and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b). Meyer conceded that he bore the burden of proof. We

agree with Meyer's concession and find that the burden of proof remains with him.
Meyer testimony.

CONCLUSIONS OF LAW AND ANALYSIS

25. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). It is instead determined under the DLGF's rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
26. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how his or her evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*
27. Generally, Meyer made a number of different arguments about errors in his assessment. But contesting the methodology the Assessor used is insufficient to make a prima facie case of an error in the assessment. *Eckerling* at 677. Instead, a taxpayer needs to provide market based evidence that shows the assessment does not accurately reflect the subject property's market value-in-use. *Id.* *See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on

the methodology used by the assessor but instead on determining what the correct value actually is.). Meyer failed to provide the sort of market based evidence necessary to show what the correct assessment should be. We now examine his specific arguments.

28. First, we address whether Meyer is being assessed for land covered by the public road. His own witness, Brosmer, testified that a survey would be necessary to make that determination. Thus, we find that Meyer has failed to provide evidence showing that he is being improperly assessed in this manner.
29. Meyer also argued that he should not be assessed for commercial land because he now operates his business as a sole proprietorship rather than a corporation, and because he does not use the land for retail purposes. The choice to classify land as commercial, residential, or agricultural is part of the Assessor's mass appraisal process using the Real Property Assessment Manual and Guidelines. As discussed above, merely contesting the methodology used by the Assessor is insufficient. Instead, if Meyer believed his assessment was incorrect, he needed to present market based evidence, such as an appraisal, showing what the correct value should be. *Eckerling* at 677. We note that Meyer also did not demonstrate that his land should have been assessed as agricultural, as the evidence shows he was using it as a staging and storage area for his business.
30. Similarly, Meyer failed to offer any market based evidence for the value of the homesite. Nor did he demonstrate that he was being assessed twice or "double taxed" for any portion of the subject property.
31. Although Meyer testified to a number of undesirable characteristics regarding the subject property, he failed to show what impact, if any, those characteristics had on the value of the property. Finally, Meyer's statements about purportedly comparable properties being assessed differently than the subject property are conclusory because he offered no evidence showing comparability. Conclusory statements that a property is "similar" or "comparable" do not suffice. Instead, the proponent must explain how the properties

compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471.

32. In summary, there is no evidence showing a value for the subject property as of 2017 assessment date. The burden is on Meyer to walk the Board through the facts supporting his case and the Board will not make his case for him. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax. Ct. 2004). We find that Meyer failed to make a prima facie case for any change in the assessment.

SUMMARY OF FINAL DETERMINATION

33. Meyer failed to make a prima facie case for lowering the assessment. The Board finds for the Assessor. We order no change to the 2017 assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.